A YEAR OF CHANGE

SASKATCHEWAN HUMAN RIGHTS COMMISSION

ANNUAL REPORT 1989

ON THE FRONT COVER: (clockwise from the top) Jenny Porteous, Mitchell Lavallee, Ehsan Sehbai, Jennifer Chanthavone, Yasmeen Sehbai, Marissa Babalola

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Saskatchewan Human Rights Commission

SASKATCHEWAN
HUMAN
RIGHTS
COMMISSION

1989 Annual Report

The Saskatchewan Human Rights Code states:

3. The objects of this Act are:

(a) To promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family; and,

(b) To further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.

SASKATCHEWAN

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March 16, 1990

The Honourable J. Gary Lane, Q.C.
Minister of Justice
Room 355
Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Mr. Lane:

It is with pleasure that I submit the 1989 annual report of the Saskatchewan Human Rights Commission to you, pursuant to Section 49 of The Saskatchewan Human Rights Code.

Yours truly

Theresa A. Holizki, Q.C.
Chief Commissioner

TAH.jmc

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Theresa A. Holizki, Q.C.
Chief Commissioner

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1989: A Year of Change

1989 saw many changes at the Saskatchewan Human Rights Commission. Amendments to *The Saskatchewan Human Rights Code* and an expressed commitment to battle racism have set a new direction for the Commission.

In addition, 1989 marked the end of the six-year term of Ron Kruzeniski as Chief Commissioner. I would like to take this opportunity to pay tribute to Ron's dedication and hard work.

His tenure was marked by significant advances in the area of affirmative action, both in the workplace and in our school system. Education Equity, designed to bring greater benefits to Indian and Metis children in the schools, developed from an idea to a program in which 19 school boards now participate. The plans cover 36 percent of the Saskatchewan school population, of which 15.2 percent are of Indian ancestry.

In the workplace, eight employers have set up affirmative action programs; among them are the cities of Saskatoon and Regina and the Government of Saskatchewan.

Accessibility standards guidelines developed by the Commission were strengthened and promoted under Ron's guidance, setting a much needed standard of accessibility for public buildings and facilities for those with disabilities.

The leadership provided by Ron Kruzeniski during his tenure as Chief Commissioner has done much to advance the cause of human rights in the province. We thank him for it. The commitment of all the commissioners, particularly to disadvantaged groups in our society, coupled with the hard work of staff, have begun a process that I believe is moving towards equal opportunities for the affirmative action target groups: people of native ancestry, people with disabilities, and women in management and non-traditional jobs.

Building on the work already begun, and assessing where there is the greatest need for our attention now, the Commission has made a firm commitment to battle the ugly manifestations of racism in whatever forms they appear in our province.

We know there is racism in Saskatchewan. The work we do gives us a clear indication of that. Last year, 18 percent of the complaints received by the Commission were based on race discrimination.

Surveys and studies also tell us there is race discrimination, and that it is on a broad scale. Statistics tell us that people of Indian ancestry don't receive equal benefit in the workplace and in our schools. At the time of the latest census, for example, when the overall unemployment rate in Saskatchewan was eight percent, for aboriginal people, unemployment was close to 30 percent. When economic opportunities are denied to minority groups, one of the results is increased unemployment and poverty.

Issues such as Sikhs wearing turbans in the RCMP and the proposed distribution of racist pins tell us that visible minority groups are feared and disliked by many people in this province.

These disturbing events make it clear that racism is a problem in Saskatchewan, and it is one that individuals and organizations can no longer ignore.

The Commission will be speaking out against racism in as vocal and effective a way as possible. We will also be working with the Saskatchewan Communications Advanced Network (SCAN) in the production of a series on the subject of racism; we will be emphasizing our affirmative action programs in the workplace and in the schools; we will be participating in public meetings in which the issue of racism can be explored and confronted; and we will emphasize the need for positive change through our educational programs and materials.

The enactment of amendments to *The Saskatchewan Human Rights Code* is another important event of the past year. We are particularly pleased with amendments that bring people who have a mental disability under the protection of the *Code*. Other provinces have had this protection, and their experience clearly shows that people with mental disabilities are discriminated against.

The definition of mental disability in the Saskatchewan *Code* includes mental retardation or impairment, a learning disability, and mental disorder. Mental disorder is described as a disorder of thought, perception, feelings or behaviour that impairs a person's judgment, capacity to recognize reality, ability to associate with others, or ability to meet the ordinary demands of life.

Another important amendment broadened section 14 of the *Code* providing greater protection for minority groups

from published articles or broadcast statements that expose them to hatred or ridicule or belittles them or affronts their dignity.

This amendment is particularly important because of a Court of Appeal decision handed down last year, which revealed a weakness in Section 14 as it was then. The Court ruled that the wording of the *Code* was not broad enough to include articles or statements. Rather it was to be restricted to notices, signs, symbols, emblems, or other representations. The Commission expressed its concern at that time, and is gratified by this swift legislative response. The amendment adds "articles" and "statements" to the list of representations that are prohibited. The strengthening of section 14 has given the Commission another tool to combat racism.

Changes were also made to section 15 which provides protection from discrimination in contracts on the basis of race, creed, religion, colour, sex, marital status, nationality, ancestry or place of origin. Under the amendments, those with a disability will also be protected, with some limitations. This section is not yet in effect, but we anticipate that change will come in 1990.

The definition of employer and employee have also been amended. Under the legislation as it previously stood, employees were not protected by the *Code* when they were working in a private home or the home of their employer. Under the amended *Code*, employers who are looking for someone to work in their home or a private home can still give preference to applicants of a particular race or sex, for example, without fear of contravening the *Code*. However, once hired, that person cannot be discriminated against in his or her terms and conditions of employment.

Another important change to the *Code* is one which refers to non-profit organizations. Under the amendment, non-profit organizations that are charitable, fraternal, religious, racial or social can still employ people of the same religion, sex, race and so on, but only if it is reasonably necessary for them to do so because of the nature of the employment. In all other employment circumstances, non-profit organizations must adhere to the provisions of the *Code*.

I also want to recognize the hard work of the Commission's Investigations Unit. Measures taken over the past two years to reduce the time required to complete an investigation are taking effect. The average length of time required to complete an investigation decreased from 59 weeks in 1988 to 54 weeks in 1989. In 1990, it is anticipated there will be further improvement in this area.

I anticipate that my years as Chief Commissioner will be challenging ones, and I am looking forward to them. I will be relying on the knowledge of the other Commissioners, the expertise of staff and the support of the community. Together, I believe we can make Saskatchewan a place where no child will suffer because of the colour of his or her skin. Their young lives are full of promise. Prejudice and racism should not be allowed to limit that promise.

Theresa A. Holizki, Q.C.
Chief Commissioner

Commission Members

A new Chief Commissioner, Theresa Holizki, was appointed in 1989, joining Commission members Jan Kernaghan, Phyllis Unrau, Isabelle Impey, and Ken Mah. Holizki undertook her new duties in August replacing Ron Kruzeniski, who resigned to accept a position as Assistant Deputy Minister with Saskatchewan Human Resources, Labour and Employment.

Commission members are appointed by the Lieutenant-Governor in Council for a five-year term, which may be extended for a further five years. The Commissioners attend monthly meetings where they set policy, approve settlements, review complaints, decide whether complaints should go to a board of inquiry, and consider applications for affirmative action programs and exemptions.

In addition, the Commissioners further public education by providing information about *The Saskatchewan Human Rights Code* and the principles upon which it is based.

The Commission employs a professional staff located in the offices in Saskatoon and Regina to carry on the daily work of the Commission and to fulfil the mandate of the *Code*.

The Commission members are:

Theresa Holizki, Chief Commissioner Holizki was appointed Chief Commissioner of the Saskatchewan Human Rights Commission in August, 1989.

She had earlier served as Deputy Chief Commissioner of the Commission, from 1983 to 1987. She has been active in a number of organizations concerned about human rights, including the National Council of Women, the Elizabeth Fry Society and the Public Legal Education Association of Saskatchewan.

At the time of her appointment, Holizki was Chairperson and General Manager of the Saskatchewan Pension Plan.

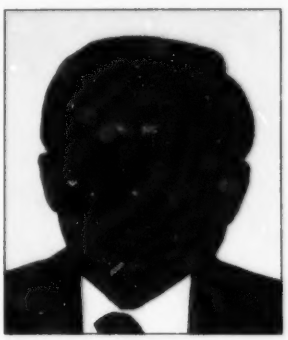
She has an honours degree in history, a Bachelor of Laws degree from the University of Saskatchewan, and receives a Masters of Business Administration (MBA) degree in May, 1990. She has been a partner in two private law practices in Saskatoon, and is a member of the Saskatchewan Law Society, the Saskatoon Bar Association and the Canadian Bar Association. In 1989, she was appointed Queen's Counsel.

Jan Kernaghan Kernaghan received her Bachelor of Laws in 1978. She is practicing law in Prince Albert and is currently with the firm of Sanderson and Wilkinson. She has been president of the Prince Albert Business and Professional Women's Club and secretary-treasurer of the Prince Albert Sexual Assault Centre Inc. She is an executive member of the Catholic Family Services board in Prince Albert and is on the Economic Development Committee of the City of Prince Albert. She is also a long-time member of the Canadian Bar Association.

Phyllis Unrau Unrau is a business woman who shares responsibility for the family insurance business with her husband. A long-time resident of Martensville, she has several years of involvement in community and church organizations. She is a member of the Mennonite Church and has been active on several church committees, has been community liaison for the Saskatoon Community College, has been involved in the local Home and School Association, is a member of the Chamber of Commerce and has served on its executive.

Isabelle Impey Impey is Superintendent of Student Services for the Prince Albert District Chiefs Council Indian Student Education Centre. She is an active volunteer in the native community and is a member of the Association of West Central Native Women and the Prince Albert Indian-Metis Friendship Centre. Impey also works with women who, at one time in their lives, have experienced family violence. She assists self-help groups and also does training in the area. She was also actively involved in the implementation and operation of Prince Albert's Interval House, a transition house for battered women, where she served as a management committee member for four years.

Ken Mah Mah is president of Skyco International Management Ltd. and is a director of Sinotek International (1986) Inc. He is active in the community and has been a member of the Regina Multiculturalism Council for 13 years. He was a founding member of the Chinese Cultural Association of Saskatchewan and was the organization's first president. He has also been a strong supporter of the Chinese Pavilion at Mosaic for 13 years, and was the Pavilion's ambassador for two years. He is a founding member of the Chinese Canadian National Council (CCNC), a national organization whose purpose is to promote equality for Chinese Canadians.



Commission Mandate

The Saskatchewan Human Rights Commission is a law enforcement agency responsible for the administration of *The Saskatchewan Human Rights Code*.

The purpose of the *Code* is to:

a. promote recognition of the inherent dignity and the equal inalienable rights of the human family; and

b. further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.

These objects are derived from the Universal Declaration of Human Rights adopted by the general assembly of the United Nations in 1948.

One of the ways these goals are pursued is through the protection of certain human rights by law. Under *The Saskatchewan Human Rights Code*, protected rights fall into two categories – fundamental freedoms and equality rights.

Fundamental Freedoms

- Freedom of conscience
- Freedom of religion
- Freedom of expression
- Freedom of association
- The right to vote in provincial elections

Equality Rights

There must be no discrimination in housing, employment, public services, education, contracts and publications on the basis of:

- Race or colour
- Creed or religion
- Nationality, ancestry or place of origin
- Sex (including sexual harassment)
- Marital Status
- Disability
- Age

The *Code* gives the Saskatchewan Human Rights Commission the authority to:

- Investigate and settle complaints of dis crimination
- to carry complaints before boards of inquiry
- to approve or order affirmative action programs
- to grant exemptions from certain provisions of the *Code*
- to make regulations subject to the approval of the Lieutenant Governor in Council
- to carry out research and educational programs that will advance the principles of equality and eliminate discriminatory practices.

Investigations

A person who believes he or she has been discriminated against contrary to the provisions of *The Saskatchewan Human Rights Code* may complain to the Commission. A third party or the Commission itself may also initiate a complaint.

The staff of the investigations unit is responsible for receiving and investigating complaints. The first step in an investigation is an initial inquiry to determine if the complaint falls within the jurisdiction of the *Code* and if reasonable grounds exist to believe the *Code* was violated.

If those standards are met, a complete investigation will be conducted to determine if there is enough evidence to support the complaint. Staff in the investigations unit have the authority to interview people who may have information about a complaint. They can also examine relevant records and documents, including employment records.

If the investigation does not substantiate the allegation, the complaint is dismissed. Where the evidence gathered by the investigations unit does support the claim, an attempt is made to negotiate a settlement between the parties.

If a settlement cannot be negotiated, the matter is referred to the commissioners who may then direct that a board of inquiry be appointed. Boards of inquiry are independent tribunals appointed by the Minister of Justice, to hear evidence into the complaint. (See accompanying complaint procedure chart).

Categories of Complaints

The Saskatchewan Human Rights Commission received 243 complaints during 1989, an increase of 6 percent over the number of complaints received during 1988.

Also under investigation during 1989 were 116 files that were carried forward from 1988, putting the total number of files under investigation during 1989 at 359.

The complaint files are drawn from general inquiries made to the Commission offices in Saskatoon and Regina. Last year, approximately 6,300 inquiries were made, ranging from requests for information about the *Code* to requests for printed materials, calls about affirmative action programs and so on. The number of general inquiries received last year increased by 38 percent over the the number of inquiries received in 1988.

A portion of that increased workload was attributable to the *Chambers* case. In 1988, the Saskatchewan Court of Appeal ruled that Murray Chambers had been discriminated against by the province's social assistance system which, for a period of time, gave single employables less than married employables.

The government reimbursed Murray Chambers for the amount he had been underpaid and agreed to reimburse other single employables in the same situation. In 1989, the process of reimbursement was begun.

(For additional information on the *Chambers* case, see the Court Decisions section in this report).

Although the process of reimbursement was handled through the Department of Social Services, the Commission provided information and, in addition, made enquiries to the department on behalf of those who were not satisfied with the department's assessment of their claim.

More than 800 enquiries about underpayment of single employables were received, with 45 complaint files opened as a result of those enquiries. By the end of the year, investigation had been completed on the 45 files, with 15 moving into the settlement process.

In spite of this increased workload, because of streamlined procedures, the investigations unit was able to reduce the average length of investigations time during 1989 from 59 weeks to 54 weeks. It is anticipated that in 1990, there will be further improvement in this area.

Two additional cases had a significant impact on the Investigations Unit in 1989. They were the cases of *Wahn and Glute* v. *Tripolis Foods Ltd.* and *Marcotte* v. *Jonlee Holdings Ltd.* Decisions in those cases, one at the Court of Appeal level and the other from the Court of Queen's Bench, determined that sexual harassment cases must proceed through the Commission's investigation process in a timely fashion. Too lengthy a time period between the filing of a sexual harassment complaint and establishing a board of inquiry violates the rights of the respondent (the person who is alleged to have violated the *Code*) as guaranteed to him by the *Charter of Rights and Freedoms.*

In both cases cited above, the Commission was told that because of the time it had taken for those cases to move through the system, it could no longer proceed against

the individual respondent, although it was allowed to proceed against the corporate respondent.

For this reason, the investigations unit has placed a new emphasis on moving sexual harassment cases through the investigative process within nine months from the date of the initial complaint.

After investigation is complete, files enter the the settlement process. At the end of 1989, there were 101 cases in this later stage of the process, that is, cases in settlement, at a board of inquiry level or cases that had been appealed to the courts.

Statistical Breakdown

Approximately 48 percent of the complaints filed in 1989 were in the area of employment, 24 percent were in the area of public services, and four percent in the area of housing.

Discrimination on the basis of sex accounted for 25 percent of complaints received by the Commission in 1989, and of those, 10 percent were complaints of sexual harassment. Discrimination on the basis of disability constituted 16 percent of complaints received in 1989.

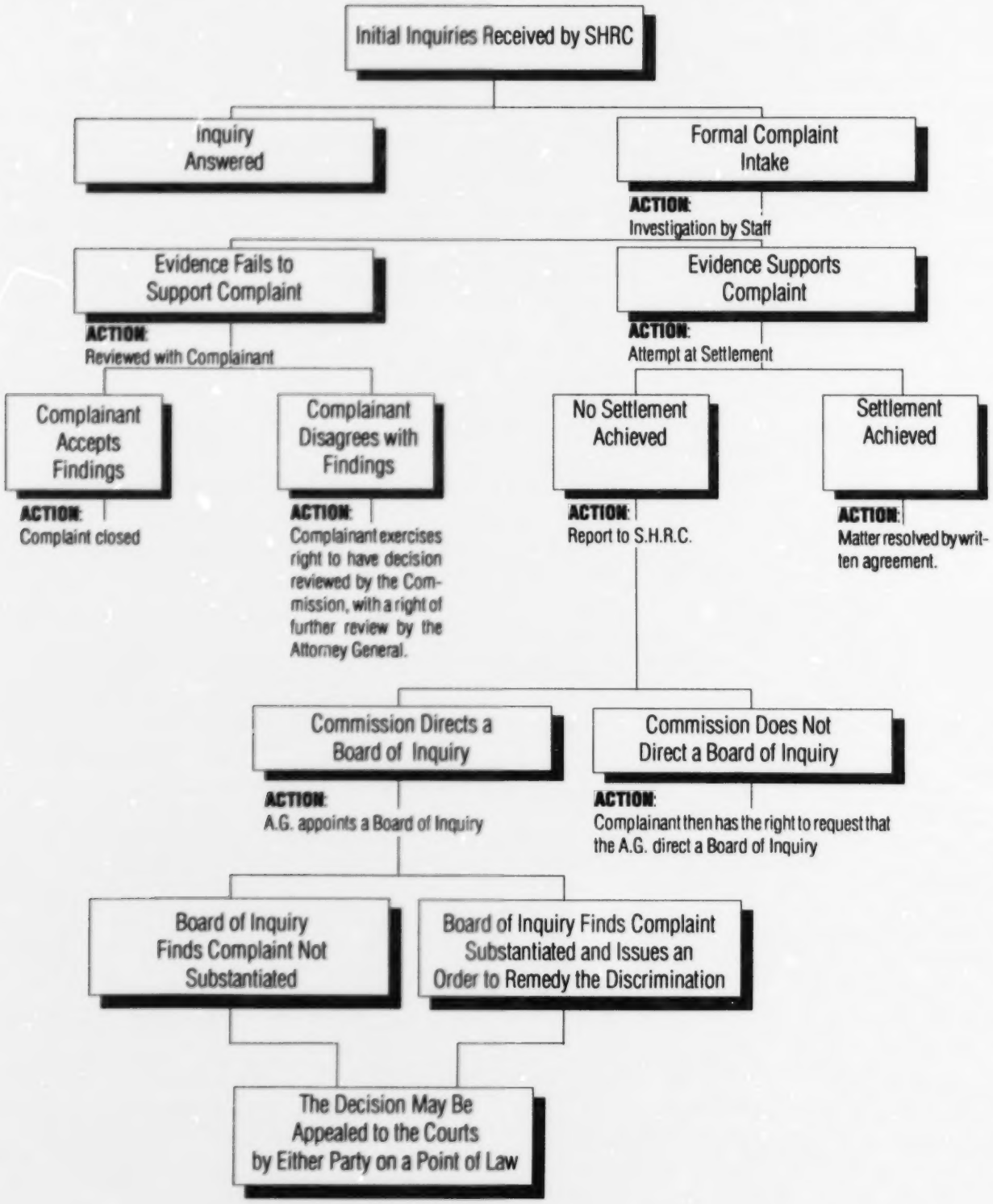
Complaints on the basis of race, colour, place of origin or nationality accounted for a further 18 percent of the Commission's complaints. Approximately two-thirds of these complaints were from people of Indian ancestry.

Fourteen percent of the complaints received related to marital status.

The bulk of complaints based on sex, sexual harassment, and physical disability were in the area of employment. People who complained of discrimination on the basis of race most often had difficulty in the areas of employment, public services and housing.

For additional information, see tables of statistics at the end of the report.

THE COMPLAINT PROCEDURE


Initial Inquiries Received by SHRC
Inquiry Answered
Formal Complaint Intake
ACTION: Investigation by Staff
Evidence Fails to Support Complaint
Evidence Supports Complaint
ACTION: Reviewed with Complainant
ACTION: Attempt at Settlement
Complainant Accepts Findings
Complainant Disagrees with Findings
No Settlement Achieved
Settlement Achieved
ACTION: Complaint closed
ACTION: Complainant exercises right to have decision reviewed by the Commission, with a right of further review by the Attorney General.
ACTION: Report to S.H.R.C.
ACTION: Matter resolved by written agreement.
Commission Directs a Board of Inquiry
Commission Does Not Direct a Board of Inquiry
ACTION: A.G. appoints a Board of Inquiry
ACTION: Complainant then has the right to request that the A.G. direct a Board of Inquiry
Board of Inquiry Finds Complaint Not Substantiated
Board of Inquiry Finds Complaint Substantiated and Issues an Order to Remedy the Discrimination
The Decision May Be Appealed to the Courts by Either Party on a Point of Law

Settlements & Tribunals

Settlements

If the Commission concludes, after an investigation, that evidence supports a complaint of discrimination, an attempt is made to reach a settlement between the two parties.

The terms of the settlement are intended to compensate the complainant for any damages suffered as a result of the alleged discriminatory treatment. All parties and the Commission must agree to the settlement, which is binding.

Settlements could include such terms as compensation for lost wages or other expenses, and payment for humiliation suffered and loss of self-respect. The respondent might also agree to change his or her discriminatory behaviour in the future, and apologize for the discriminatory behaviour.

Following are examples of a few of the complaints settled by the Commission in 1989.

Accessibility Settlement Example

A settlement negotiated by the Saskatchewan Human Rights Commission and the Saskatchewan Transportation Company (STC) will make inter-city bus travel more accessible for people who use wheelchairs.

STC has agreed to provide a specially designed wheelchair – called a Washington Chair – at 12 major STC terminals in the province. The chair, which is lighter and narrower than a standard wheelchair, can be lifted onto a bus more easily and, in addition, can be wheeled down the bus aisle.

STC has also agreed to provide boarding assistance for those who require use of the Washington Chair at the three terminals it owns – Regina, Saskatoon and Prince Albert. At terminals that are privately owned and operated on a contract basis, STC will make station masters aware of the requirements of *The Saskatchewan Human Rights Code* and encourage them to have staff available for the loading and unloading of disabled passengers.

The settlement stemmed from a complaint made to the Commission by Linda Thrower of Saskatoon, who relies on a wheelchair for mobility. She told the Commission that when she wanted to board a bus in Saskatoon heading for Moose Jaw, she was told there was no one available who could give her the required assistance.

As an additional term of settlement, STC agreed to form an advisory committee made up of two senior staff from STC and four individuals from organizations representing disabled people. The advisory committee will inspect and monitor STC's transportation services; receive and record complaints from disabled members of the public; participate in training sessions to local stations; prepare grant applications and lobby government.

STC also agreed to advertise the services available to disabled passengers, and to look towards retrofitting its buses with wheelchair lifts as it becomes economically feasible.

Physical Disability Settlement Example

The Regina office of the Deutz-Allis agricultural equipment corporation has agreed to pay $1,500 in settlement to a former employee who said he had been discriminated against because of a physical disability.

Leslie Lake of Regina told the Commission that one of the reasons he was not considered for training for the position of order clerk was because he had a minor speech impediment. He had worked with Deutz-Allis for five years as a parts person.

Lake's supervisor told the Commission that in her view his speech impediment would "pose a serious problem when dealing with customers." However, the Commission's investigation showed that Lake's speech impediment did not actually interfere with his ability to communicate with others. In addition, other employers for whom he had worked attested to his ability to communicate with customers in a satisfactory manner.

The company also agreed to adopt a policy stating that no employee or applicant for employment would be denied a job or an opportunity for a job because of a disability unless it prevented him or her from performing the duties of the job in question.

Race – Indian Ancestry Settlement Example

John Makowsky, owner of Canora Pharmacy, has agreed in a settlement with the Commission to put an end to the store's policy of refusing to sell rubbing alcohol, which can be used as an intoxicant, to all people of Indian ancestry.

To refuse to sell to someone solely on the basis of race is discrimination, and is contrary to human rights law. Pharmacies can, of course, set policies that restrict the sale of a substance to those they think are going to abuse it. For example:

- staff may refuse to sell substances to any person who is intoxicated;
- staff may refuse to sell substances to any person if it is the opinion of the staff that the substance being purchased is going to be abused;
- pharmacy staff may comply with all laws regulating the sale of any substance;
- a list of known abusers could be compiled; staff may refuse to sell to them;
- those who buy a large quantity of a substance that has the potential to be abused could be asked to justify their need for that amount.

What staff cannot do is to identify a customer as a potential abuser solely because of that person's race. Before a substance can be denied, there must be an indication that the substance is going to be abused.

The settlement stems from a complaint made to the Commission in September 1987 by Eleanor Johnson of Sturgis. She said that when she went to Canora Pharmacy to buy a small bottle of rubbing alcohol for her ears, which had just been pierced, she was refused and was told that native people were not allowed to purchase that product.

Under terms of the settlement Johnson was paid $500 in compensation for loss of self-respect. Johnson told the Commission there were a number of customers in the store at the time of the incident. She said she was extremely embarrassed and humiliated and, in addition, she regretted that her children had to witness the incident.

Under the new store policy, staff is directed not to determine whether a substance might be abused on the basis of the purchaser's race, colour, nationality, ancestry or place of origin.

Race – Other Ancestry Settlement Example

A Battleford man has apologized for a booklet claiming blacks are an inferior race and has agreed to stop publication and distribution of it through the mail in a settlement with the Commission.

In December 1988, the Afro-Caribbean Association of Saskatchewan filed a complaint with the Commission against George Hawtin, publisher and distributor of the 40 page booklet "The Living Creature: Origin of the Negro".

The booklet's theme is that blacks are a different and inferior race and it is against both natural and divine law for there to be mixing of the races. It also stated that the white race descended from Adam and was meant to rule the universe while the black race was meant to serve.

Terms of the settlement were that Hawtin apologize in writing to the Afro-Caribbean Cultural Association and stop publication and distribution of the booklet.

Sex Discrimination Settlement Example

Intercontinental Packers and the United Food and Commercial Workers Union have agreed to pay a Saskatoon woman $2,000 to settle a complaint that she had been discriminated against because she was pregnant.

Wendy Woodvine filed a complaint with the Commission in June 1987 which alleged that under the terms of the company's collective agreement she was forced to take maternity leave when she was six months pregnant, even though she wanted to continue working and was capable of performing all the duties the position required. Woodvine operated a forklift truck in freezer areas of Intercontinental's meat packing plant, and performed other lighter duties as required.

The settlement, agreed to by the employer and union without admission of liability, also specified that they would ensure the collective agreement did not discriminate against pregnant employees.

The term of the collective agreement that generated Woodvine's complaint was amended last year to allow women to work during the entire course of the pregnancy if they wished to do so. Further amendments made at the same time gave women the right to return to the position they held before they went on maternity leave.

Sexual Harassment Settlement Example

A Prince Albert woman who was fired because she refused to wear a promotional button that invited sexual comments from some male customers has received $1,400 in settlement of a sexual harassment complaint made to the Saskatchewan Human Rights Commission.

Debi Letkeman told the Commission that in July 1988 she was fired when she told the manager of Coronet Cards in Prince Albert that she would not wear the button that said "I Guarantee It".

Craig McWhinnie of Toronto, a representative of Carlton Cards, said the button was part of a promotional campaign intended to make the public aware that Carlton Cards guaranteed its service and its product. Investigation by Commission staff indicated Letkeman and other female employees were, on a number of occasions, subject to comments suggesting they were guaranteeing sexual favours or sexual satisfaction.

Chief Commissioner, Theresa Holizki Q.C., in a statement made at the time of settlement commented: "If the actions of an employer result in sexual harassment for an employee, the employer is responsible for it whether the harassment was intended or not. In this particular case, Ms. Letkeman was embarrassed and upset by the sexual comments that were directed to her because of the button she was wearing. Although there was nothing inherently offensive about the button, when management was made aware that it led to incidents of sexual harassment, they had an obligation to respond. When the store refused to allow Ms. Letkeman to remove the button during working hours, they were asking her to tolerate sexual harassment as a term and condition of employment."

In a letter of apology to Letkeman, Carlton Cards stated: "We now understand that you refused to wear this button because some men reacted to the button as if sexual or intimate contact was being guaranteed. Although such a response was never intended or envisioned by us, we regret that we were not more sensitive to the aggravation and embarrassment this reaction caused you."

Carlton Cards also agreed to discontinue use of the "I Guarantee It" button as part of its promotional activities in Saskatchewan.

Boards of Inquiry

If the parties involved in a complaint can't negotiate a settlement, the Commission will ask the Minister of Justice to appoint a board of inquiry. A board, which is independent of the Commission, will consist of one or more persons. Its function is to hear evidence from the parties and to decide, on the basis of that evidence whether the *Code* has been violated. If a violation has taken place, the board determines what damages should be awarded.

Five boards of inquiry were conducted in 1989 dealing with six complaints. A further three boards, conducted in 1988, were completed with decisions handed down in 1989. Those three boards dealt with four complaints. There still remains one board held in 1988 that is not completed; a decision has yet to be handed down. That board dealt with four complaints.

Canning and McConnell v. MacMillan Bloedel (Saskatchewan) Ltd.

A board of inquiry heard evidence October 24 to 28, 1988 and January 23 to 25, 1989 into two complaints of discrimination on the basis of sex against MacMillan Bloedel in Hudson Bay. Final argument was heard on May 16. A decision is anticipated in 1990.

Myrna McConnell of Nipawin and Gloria Canning of Hudson Bay, both of whom at one time worked in the MacMillan Bloedel woodmill, alleged that when rehiring was being done after a general layoff in 1981, they were not re-hired even though men with the same or less seniority were called back.

Louise Welen* v. *Gladmer Developments Ltd.

On November 2 and 3 a board of inquiry heard evidence into a complaint of discrimination on the basis of nationality and place of origin against Gladmer Developments Ltd., a rental housing complex in Saskatoon. Final argument was heard on December 1.

The complaint was made by Louise Welen, program coordinator of the Open Door Society, an organization which assists new immigrants to Canada. In this capacity she helped Kim and Chanly Panthachith, who are from Cambodia and Laos respectively, to apply for housing accommodation at Gladmer Park. Welen alleged they were denied rental accommodation because they didn't speak English well.

A decision was not handed down in 1989.

McDougall* v. *Saskatchewan Transportation Company and MacPherson

A Prince Albert man who was told he couldn't be a driver for the Saskatchewan Transportation Company because he wore glasses gave evidence at a board of inquiry February 2, 1989, saying he was discriminated against on the basis of physical disability.

Lyall McDougall told the board he was considered for employment by STC, but was told he would not be hired because his uncorrected vision did not meet the company standard. However, when his vision is corrected with glasses, it does meet the established standard.

STC said that for reasons of safety, it requires all new drivers to have uncorrected 20/20 vision. The Saskatchewan Human Rights Commission argued there was no evidence to show that drivers who wore glasses presented a greater hazard on the road than drivers who did not wear glasses.

A decision is anticipated in 1990.

Rother* v. *Evergreen Services Ltd.

A Saskatoon woman was awarded $3,622 in compensation for sexual harassment she was subjected to during the course of her employment with Evergreen Services Ltd., a Vancouver-based catering firm with a contract at the Canadian Armed Forces base in Dundurn.

The one-person board of inquiry, Saskatoon lawyer Randy Katzman, ordered Evergreen Services to pay Janice Rother $1,500 in compensation for humiliation and loss of self-respect, $1,632 for wages lost when she quit because of the on-going harassment, and $489 in interest.

The board, in its decision handed down May 12, said that Evergreen Services was responsible for the actions of supervisor Peter Sygouras, which included unsolicited physical contact, persistent propositions, gender-based insults and taunting.

Rother told the board, which heard the evidence in 1988, that she was made to feel "no better than a piece of meat." Evergreen Services did not appear before the board to give evidence.

The award for interest was the first in Saskatchewan to be made by a board of inquiry hearing a human rights complaint.

McKibben* v. *Watson

A Moose Jaw woman who complained to the Saskatchewan Human Rights Commission that she had been sexually harassed by her former employer has received $1,950 from him in compensation.

A board of inquiry had been appointed by the Justice Minister to deal with the complaint on May 26 in Swift Current, but before evidence could be called the parties consented to an order which required Gil Watson, owner of Diamond 2 Ranch and Farm Tax Services in Swift Current, to pay Debra McKibben $1,500 in compensation for loss of self-respect and $450 for lost wages. McKibben quit the job because of the harassment and it was approximately two weeks before she was able to find other employment.

Watson also agreed to provide all female employees hired within the next three years with a copy of the Commission pamphlet on sexual harassment.

McKibben had alleged that during the course of her employment, a period of two weeks, she was subjected to sexual advances even though she had indicated to Watson that she found his behaviour objectionable.

Mack and Pelletier* v. *Bukovina Restaurant

Two separate complaints, both alleging discrimination in the hiring process against the Bukovina Ukrainia Restaurant in Regina, were heard by a board of inquiry November 28, 1988.

In a decision handed down on January 20, 1989 by the one-person board, Douglas Andrew, a Regina lawyer, there was found to be discrimination in one case but not the other.

The board said the co-owner of the restaurant, Wasyl Marivtsan, discriminated on the basis of race when he refused to consider the application for employment of a man of Indian ancestry.

The board said it accepted the evidence it heard from the complainant, Glen Pelletier of Regina. Pelletier said that when he applied for an advertised job as a dishwasher at the restaurant in April 1985 he was told by Marivtsan that the job had already been filed.

At Pelletier's request, a friend who was not of Indian ancestry applied immediately after and was offered the job. Pelletier then complained to the Commission.

The board awarded Pelletier $750 to compensate him for humiliation and loss of self-respect.

The second complaint against the restaurant, this one alleging discrimination related to pregnancy, was found by the same board not to be justified.

Co-owner Maria Marivtsan admitted she had refused to hire Theresa Mack because she was pregnant, but said the only reason she had done so was because she believed a woman in the latter stages of pregnancy would not be able to do the job, which included heavy carrying and cleaning duties. Mack was five and one-half months pregnant when she applied for work.

The board agreed there was the potential that Mack, because of her pregnancy, would not have the physical ability required by the job and that Marivtsan believed it to be so. The board said the restaurant, in this particular case, was therefore exempt from the *Code*' requirement that employers not discriminate on the basis of sex.

The Commission appealed the board's decision in the Theresa Mack case, and lost that appeal (See Court Cases section for further information).

Burridge* vs. *Katsiris and Beef-Eaters Restaurant

A Saskatoon woman has been awarded $5,162 in compensation for sexual harassment suffered while she was employed as a waitress at The Cage Restaurant in Saskatoon.

The board of inquiry found that Judy Burridge had been sexually harassed by restaurant manager Nik Katsiris, also of Saskatoon. Burridge was 20 years old at the time of the harassment.

In a decision dated December 1, 1989, the board found there were physical and verbal incidents of sexual harassment over a five-week period in the fall of 1986. The board said evidence showed that Katsiris had slapped Burridge on the buttocks, had kissed her, and had put his hand inside the back of her shirt. All of this unwelcome harassment "caused injury to her feelings and self-esteem," the board said. She told the board at the inquiry in December 1988 that she quit her job because the harassment was intolerable.

Compensation was made up of an award for loss of self-respect of $1,000 and an award for loss of wages of $4,162. The board determined what should be awarded to her for loss of wages on the length of time it took her to find a new job, a period of four months.

Larivlere et al* v. *Zaboysky and Nickel Hotel Ltd.

The board of inquiry hearing evidence into complaints of sexual harassment made by four women who worked at the Winston Hotel in Moose Jaw was adjourned April 13, 1988 until further notice.

The four women allege that their former employer, Nick Zaboysky, sexually harassed them physically and verbally when they were employed as waitresses at the hotel.

Zaboysky's lawyers asked to have the complaints dismissed arguing that the length of time which had elapsed between the filing of the complaint and the establishment of the board violated rights guaranteed by the *Charter of Rights and Freedoms*. The complaints were filed with the Commission in 1985 and 1986.

The one-person board, Kenneth Cornea of Moose Jaw, received written argument on the issue from all parties, for his consideration. He has not yet handed down a decision on the application for dismissal.

Court Decisions

Decisions of a board of inquiry may be appealed to the court by any party to a complaint. In 1989, nine court decisions were handed down. One decision is still pending.

Day* v. *City of Moose Jaw et al.
Craig* v. *City of Saskatoon et al.

The Supreme Court of Canada has ruled that firefighters may be forced to retire at an age younger than 65 because of the strenuous work they do.

Two Saskatchewan firefighters complained to the Commission in the early 1980s that they had been discriminated against by their employers and their unions under collective agreements which required firefighters to retire before they reached 65. Len Craig of Saskatoon had been forced to retire at age 60; Roy Day of Moose Jaw at age 62.

The cases were heard by two separate boards of inquiry, one in 1982 and the other in 1984. The employers argued early retirement for firefighters should be allowed as an exception to the *Code*, referred to as a "reasonable occupational qualification." Under a reasonable occupational qualification, employers are allowed to treat employees or job applicants differently in some circumstances; one of those circumstances is when being a certain age is essential to do a job safely.

All parties took a careful look at safety on the job, and agreed that firefighting is a strenuous occupation where risk of failure by a firefighter would put the public, the firefighter himself, and his colleagues at risk. But there was disagreement about the best way to ensure that a force's firefighters are not likely to suffer sudden performance failure such as a stroke or heart attack in strenuous job situations.

The board of inquiry that heard the Craig case said age was the best indicator of who was physically able to do the job, that age was therefore a reasonable occupational qualification, and to retire firefighters at age 60 was not contrary to the *Code*.

The board of inquiry that heard the Day case said performance testing could identify those who, regardless of age, were unable to perform the tasks of firefighter and, therefore, age was not a reasonable occupational qualification.

The cases were appealed to the Court of Queen's Bench, appealed again to the Saskatchewan Court of Appeal, and appealed finally to the Supreme Court of Canada. The Supreme Court heard the Day and Craig cases in February 1989 and handed down its decision in December.

The Supreme Court said the Craig board had been correct in its analysis of the law. The employer must establish two things: one, he had a sincere belief that it was necessary not to have anyone older than 59 on the job for the work to be adequately performed, and; two, the requirement for younger firefighters was, in fact, reasonably necessary. The Court also emphasized that the employer must deal satisfactorily with the question of why individual testing was not possible.

As the board had applied the right tests, the Supreme Court said it would not overturn the conclusion the board had come to on the facts. The Board had found as a fact that individual testing was not practical, and concluded that the employer was acting reasonably in applying a mandatory retirement policy.

> "The Board concluded on the basis of evidence before it that as a person ages his or her ability to perform the tasks required of a firefighter decreases. The board was also of the opinion that there were no reliable testing procedures that would accurately determine how the individual firefighter would be able to cope in an emergency situation. Therefore, it was unnecessary to undertake individualized functional testing in order to determine if age is a reasonable occupational qualification and requirement for the position of a firefighter."

In the second case before the Supreme Court, that of *Roy Day* v. *The City of Moose Jaw*, the board had determined individual testing was an alternative to

mandatory retirement. However, the board had erred in applying the law, the Supreme Court said, and its decision could not stand.

Ordinarily, where an error has been made in law, the case would be referred back to the tribunal that made the mistake, in this case, the board, to be reconsidered in light of the law as defined by the higher court. However, in this particular case, the Supreme Court determined that because of the death of the complainant, Roy Day, there was no longer a practical reason to come to a new determination on the facts. The matter is "moot," said the Supreme Court.

Hoffer* v. *Havemann et al; Engineering Students Society Inc. et al (The Red Eye)

On June 8, 1989, the Supreme Court of Canada denied the Commission leave to appeal a decision that defined the scope of the publications section of the *Code*. That section of the *Code* has since been amended.

The Saskatchewan Court of Appeal found, in a decision handed down in January 1989, that two editions of the Red Eye published by the Engineering Students Society did not contravene Saskatchewan human rights law. A 1984 board of inquiry that found there had been a contravention of *The Saskatchewan Human Rights Code* erred in law, the Appeal court said.

Section 14 of the *Code*, as it was then, prohibited publication of any notice, sign, symbol, emblem or other representation that attacked the dignity of people or that tended to expose them to hatred or ridicule because of, among other things, their sex. The Court of Appeal said the phrase "other representation" did not include written articles.

Justice Cameron, who wrote the majority opinion, said "that the impugned content of the two editions constitutes an affront to the dignity of women is clear, but whether its publication in whole or in part offends Section 14 of the *Code* is another."

He said Section 14 applied only to the display or publication of notices, signs, symbols and so on, and not to written articles. "It is not for us to say why the legislature chose to limit the scope of the section, but limit it ti did, and we must respect that."

As a result of that decision, the Commission asked for changes to Section 14 of the *Code*. It was amended in July 1989 by adding "articles" and "statements" to the list of representations that are prohibited.

Chambers* v. *Saskatchewan Social Services

In May 1989, a board in inquiry ruled that Murray Chambers should receive $100 in compensation for humiliation and loss of self-respect for discrimination he suffered under the province's social assistance system.

That decision was appealed to the Court of Queen's Bench by the Commission which argued that the board had erred in law in not awarding more to Chambers in humiliation damages.

Chambers had previously received $632.50 to compensate him for the amount he had been underpaid over a three-year period under the province's social assistance plant. But the *Code* also allows for the payment of compensation to a maximum of $5,000 for humiliation and loss of self-respect suffered as a result of discrimination in addition to any monetary damages actually suffered. It was under this head of damages that Chambers was awarded $100 by the board of inquiry.

Mr. Justice Sirois of the Court of Queen's Bench, in his decision dated September 13, said there had not been an error of law, and it was not for him to reassess damages that had been awarded by the board. His decision was not appealed by the Commission.

That was the final skirmish in a legal battle that had been underway since 1985 when Chambers complained to the Saskatchewan Human Rights Commission that he was being discriminated against because he was single. *The Saskatchewan Human Rights Code* prohibits discrimination in the provision of services to the public on the basis of marital status.

Under the province's social assistance plan as it was then set up, people categorized as single employables received less money than married employables. Single employables received a basic allowance of $123 a month, while a childless married couple received $178 a month each, a difference of $55 (44.7 percent).

A board of inquiry was held in December 1986. It said the province's social assistance plan didn't come under provincial human rights legislation because it wasn't a

service "customarily admitted or offered to the public" but only to a limited category of the public, in this case, people in need.

It's decision was appealed to the Court of Queen's Bench, which agreed with the board. The Court of Appeal overruled these decisions. The province's social assistance plan was a service offered to the public, the appeal court said, and therefore discrimination on the basis of marital status wasn't allowed.

The judgment said that even though only some members of the public take advantage of a government service, it can still be defined as a public service. Only rarely will government services apply to all citizens equally. Instead, you have to look at whether they are offered on an equal basis, the appeal court said.

"Health services, for example, are provided to persons who demonstrate their eligibility, based upon residency, and who can demonstrate a health problem."

The fact that there are eligibility criteria and application forms should not be interpreted as a restriction of a service to the public, the judgement said. Rather, eligibility criteria are there to ensure the impartial and universal application of a service.

"The provision of financial assistance under the Saskatchewan Assistance Plan is no different from any other government service. It is offered to the public, but not all members of the public will qualify."

The government agreed to reimburse all single employables for the amount they had been underpaid under the province's social assistance plan. The board ordered Social Services to put ads in newspapers and to send notices out with social assistance cheques so that as many single employables as possible who were on assistance for any period of time between May 1, 1984 and December 31, 1987 would know they were entitled to back payment of $55 a month.

Heidt* v. *City of Saskatoon and Civic Unions

On September 13, 1989 the Saskatchewan Human Rights Commission argued before the Court of Appeal that the City of Saskatoon discriminated against James Heidt when it denied him sick leave benefits to which younger employees were entitled. The Court reserved its decision.

Heidt had been employed by the City of Saskatoon for 16 years as a seasonal employee when he fell ill with cancer. He received benefits under the employer's Sick Leave Bank, but was cut off after three years because he was then over the age of 55.

The impact of the provision was particularly significant for Heidt – permanent employees are eligible to receive a pension at the age of 55; seasonal employees are not. He complained to the Commission in 1987 that he was being discriminated against because of his age.

The matter went to a board of inquiry in May 1988; the board found there had been no contravention of the *Code*. The Commission appealed the board's decision to the Court of Queen's Bench. Mr. Justice Matheson, in a decision handed down December 1988, agreed with the board.

Justice Matheson said the City's Sick Leave Bank did not come under *The Saskatchewan Human Rights Code* because it was a *bona fide* employee insurance scheme and as such was exempted from the *Code*. The *Code* specifies that a *bona fide* retirement, superannuation or pension plan may apply the terms of those plans differently for people of different ages.

The Commission agreed that the intention of the City and the Union in providing a long-term disability plan for employees was *bona fide* – that is, they acted honestly and in good faith. However, the Commission argued that even though the intention of the city and union in setting up a plan was *bona fide*, the actual operation of the plan was not *bona fide* because it made unfair distinctions based on age that were not necessary for the plan to operate effectively.

Justice Matheson disagreed. He said that if a group or insurance plan as a whole is *bona fide* – meaning that it was set up honestly and in good faith – then all of the terms of the plan are exempt from the *Code* and do not have to be assessed further.

Mack* v. *Marivtsan

A woman who was refused a job because she was pregnant has been told by a Court of Queen's Bench that there was no contravention of *The Saskatchewan Human Rights Code*.

Mack had complained to the Saskatchewan Human Rights Commission in 1986, saying she had applied for a job as a kitchen helper at the Bukovina restaurant in Regina owned by Wasyl and Maria Marivtsan, but was refused because she was five-and-a-half months pregnant at the time.

The case went to a board of inquiry in November, 1988. Maria Marivtsan told the board it was her belief that the applicant would not be able to do the job, which included some heavy carrying and cleaning duties, because of her pregnancy. The board agreed that in this particular job there was the potential that this was so; the restaurant was therefore exempt from the *Code*'s requirement that employers not discriminate on the basis of sex, which includes pregnancy.

The Commission appealed the case and argued that the board should have considered "objective" evidence relating to Mack's physical capability. Mr. Justice Wright of the Court of Queen's Bench heard the appeal. He said that while Marivtsan's evidence was not "independent", her experience as a restaurant owner and as a woman who had been pregnant four times was sufficient for her to draw a conclusion.

Wahn and Glute* v. *Kodellas and Tripolis Foods Ltd.

The Saskatchewan Court of Appeal has ruled that the Saskatchewan Human Rights Commission acted too slowly in its investigation of a complaint of sexual harassment against restauranteur Gus Kodellas.

In a decision handed down June 7, the court held that the length of time that had elapsed between the filing of the complaints and establishing a board of inquiry, a period of almost four years, violated the rights of Kodellas guaranteed to him by the *Charter of Rights and Freedoms*.

The judgment noted: "It appears from the evidence that insufficient resources in the form of monies for the hiring of investigative personnel have been dedicated by the provincial government to ensure that the principles and objectives of *The Human Rights Code* are vigorously pursued and that the human rights of individuals are assiduously protected and jealously guarded."

Mr. Justice Vancise said Kodellas experienced not only potential but actual prejudice in his ability to mount a fair answer and defence as a result of the unreasonable delay. In addition, there was the stigmatization, the anxiety and the disruption of family life for a period of time beyond which one would normally expect to be subjected.

Those two factors deprived Mr. Kodellas of his right to security of the person as guaranteed in Section 7 of the *Charter of Rights and Freedoms* in a manner not in accordance with the principles of fundamental justice.

The Court also said, however, proceedings could continue against the corporate entity, Tripolis Foods Ltd. While Mr. Kodellas applied for a remedy under the *Charter*, no such application was made by Tripolis Foods. The Court decided it was therefore unnecessary to consider whether a corporation is entitled to Section 7 rights under the *Charter*. The complaint against Tripolis Foods Ltd. is being processed.

Donna Rodin* v. *Jack Herman and Jack's Motor Hotel

Sexual harassment is sex discrimination and as such it comes under *The Saskatchewan Human Rights Code*, Mr. Justice McLellan of the Court of Queen's Bench confirmed in a decision handed down January 9, 1989.

The decision stemmed from an appeal by Jack Herman of Maple Creek, who had been ordered to pay compensation of $2,600 by a board of inquiry which found he had sexually harassed one of his employees, Donna Rodin.

Herman argued before the Court of Queen's Bench that sexual harassment is not sex discrimination, and as the *Code* refers only to sex discrimination, sexual harassment is not covered.

Mr. Justice McLellan rejected that argument. Sexual harassment is sex discrimination, he said. "The proposition that sexual harassment is the product of individual attraction and is not based on gender ignores the factual realities. A woman is sexually harassed not because of who she is, but because she has a woman's body and therefore is identified and treated differently because of her gender."

He accepted the proposition that forms of prohibited conduct run the gamut from coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender-based insults and

taunting which create a negative psychological and emotional work environment.

He agreed with an earlier case that established: "An invitation to dinner is not an invitation to a complaint. The danger or the evil that is to be avoided is coerced or compelled social contact where the employee's refusal to participate may result in a loss of employment benefits.

"If any feature of employment becomes reasonably dependent on reciprocating a social relationship proffered by a member of management, then the overture becomes a condition of employment and may be considered to be discriminatory."

John Douglas and Jonlee Holdings Ltd.* v. *Brenda Marcotte et al.

An application to the Court of Queen's Bench stopped a board of inquiry from hearing a complaint of sexual harassment made by Brenda Marcotte against Jonlee Holdings Ltd. and John Douglas.

Mr. Justice Lawton, using the *Wahn and Glute* case as precedent, said there was an unreasonable delay between the time the Saskatchewan Human Rights Commission informed Mr. Douglas of the complaint and the date of the hearing – a gap of two years and seven months – that violated the rights of Douglas guaranteed to him by *The Charter of Rights and Freedoms*. Because of the delay, Douglas could have been prejudiced in mounting a full answer and defence, Justice Lawton said.

The Commission was permitted to continue proceedings against the corporate entity, Jonlee Holdings.

Edadeen Bird* v. *Norman Ross and Aphetow House Ltd.

In 1987, a board of inquiry determined there had been discrimination on the basis of sex when a woman was fired because she had an abortion. That decision was appealed by the respondents Norman Ross and Aphetow House Ltd. However, they did not pursue the matter and the appeal was dismissed by the Court of Queen's Bench in December, 1989.

The decision made by the board in 1987 therefore stands. The board had determined that Edadeen Bird of Christopher Lake was fired from her waitressing job at Aphetow House Restaurant close to Montreal Lake by manager Norman Ross, who disapproved of abortions.

The board held the firing was contrary to *The Saskatchewan Human Rights Code*, which protects women from discrimination on the basis of pregnancy or pregnancy-related illnesses.

It said that under the provisions of the *Criminal Code* as it then was, a therapeutic abortion could only be performed if continuation of the pregnancy would likely endanger life or health. "It is obvious, therefore, that Edadeen Bird had a life or health threatening medical situation as a result of her pregnancy. She had a pregnancy-related illness," the board said.

The board ordered Aphetow House and Ross to pay Bird $2,528 in compensation for lost wages, and an additional $2,000 to compensate her for humiliation and loss of self-respect.

Affirmative Action

Affirmative action is designed to fight discrimination in the workplace and in schools.

It is a response to a kind of discrimination that is particularly hard to eliminate because it has become part of the way society is structured. That kind of discrimination is called systemic discrimination.

In Saskatchewan, affirmative action programs are developed in conjunction with the Saskatchewan Human Rights Commission, and upon completion, are approved by the Commission.

Affirmative Action is a commitment to alter the policies, practices and procedures of institutions so that members of the target groups (those underrepresented in the workplace and educational institutions) have an equal opportunity to succeed. In Saskatchewan, the target groups are women, people of Indian ancestry, and people with physical disabilities.

Affirmative action is based on the belief that some groups have historically been disadvantaged in the workplace and in educational institutions and the effects of those discriminatory practices are being felt today. It is anticipated that affirmative action programs will help to redress imbalances that continue to exist in the workplace and in schools.

The Saskatchewan Human Rights Code provides four ways to implement affirmative action programs:

1. The Commission may approve a voluntary program (Section 47);

2. The Commission may order that a program be put into place (Section 47);

3. A board of inquiry may order a program as a remedy where there is evidence of discrimination (Section 31(7)(a));

4. An affirmative action program may be introduced in settlement of a complaint.

Approval of a program provides the applicant with legal protection for any preferential measures which may be undertaken. With the proclamation of Section 15(2) of *The Canadian Charter of Rights and Freedoms*, on April 17, 1985, additional constitutional protection for affirmative action programs came into place.

Employment and Training Programs

The Commission has noticed growing interest in affirmative action during the past year. This interest is due in large part to contract compliance initiatives at the federal level.

Contract compliance works this way: The government would do business only with those companies willing to support affirmative action. Suppose the government wanted to have a building constructed. It would consider tenders only from those builders who were ready to follow affirmative action guidelines in hiring. The builder would have to make a good-faith effort to ensure that the number of disabled people, aboriginal people, and women in management positions and the trades were not underrepresented.

Because federal contractors are regulated by provincial legislation, and it is the Saskatchewan Human Rights Commission which approves and monitors affirmative action plans in Saskatchewan, it is anticipated that the Commission's work load will increase with the development of the federal government's contract compliance program.

At the end of 1989, there were at least 12 employers developing contract compliance programs, among them the University of Saskatchewan and the University of Regina.

In 1989 *The Saskatchewan Human Rights Code* was amended to include mental disability as a protected characteristic. As a result, the Commission has expanded its list of target groups for the province's affirmative action programs, adding persons with mental disabilities to the already existing target group members – aboriginal persons, women in management positions and non-traditional jobs, and people with physical disabilities.

A new affirmative action plan was granted approval by the Commission on July 6, 1989. The plan, developed by CUPE 600 and the Government of Saskatchewan, covers 1,500 workers employed in social services and health institutions operated by the province. Two other plans covering provincial government employees are already in existence. With the approval of this program, all persons working directly for the provincial government are now covered by affirmative action programs.

For a list of affirmative action programs currently in effect in Saskatchewan, see chart.

Monitoring Reports

In addition to approving affirmative action programs, the Saskatchewan Human Rights Commission is responsible for monitoring programs that have already been approved.

The province's affirmative action programs cover several major areas of activity. Programs offered by SIAST, the Gabriel Dumont Institute, the College of Arts and Science at the University of Saskatchewan and teacher training programs for aboriginal people, such as NORTEP and SUNTEP, are designed to improve equity in education.

The other major type of program is that which improves equity in the workplace. Employment plans include the Government of Saskatchewan, the Cooperators, Saskatchewan Telecommunications, Saskatchewan Government Insurance, the City of Regina, Westbridge Computers and the City of Saskatoon.

The reports from the 15 employers and educational institutions in the province that have affirmative action programs were presented at the Commission's annual monitoring hearings, held this year in Saskatoon.

The hearings provide an opportunity for the Commission, the public and interested parties to review the progress of affirmative action in the province and to ask the sponsors of the programs for information.

A number of representatives from organizations with an interest in affirmative action also attended the hearings. Generally, these participants were interested in monitoring the impact of affirmative action in achieving an equal representation in the workplace of women, persons of Indian ancestry and people with physical disabilities.

During the hearings, the Commission also met with a number of organizations representing the physically disabled community of Saskatchewan. They had been invited to give their assessment of affirmative action's impact on the employment of people with physical disabilities.

Groups that presented briefs supported the need for affirmative action programming, but also expressed strong concerns about how effective it has been. The impact on the employment of physically disabled people, particularly people with disabilities requiring accommodation, has been minimal, the groups said.

The Commission views these meetings as part of an ongoing process of consultation with the physically disabled community to improve the impact of affirmative action.

All of the employers and educational institutions who reported on the progress of their affirmative action plans to the Saskatchewan Human Rights Commission in Saskatoon June 21 and 22 received a nod of approval for the results they have achieved so far.

The Commission did suggest changes some of the organizations could make to achieve their goals more quickly. All of the conditions set by the Commission for on-going approval were agreed to.

In addition to a review of the 15 ongoing programs, a new plan developed by the Government of Saskatchewan and Canadian Union of Public Employees (CUPE), Local 600 received approval.

In 1990, the Commission will be monitoring a total of 34 programs, including 19 education equity plans, and will continue working with organizations in the process of developing plans.

Education Equity

Two more Education Equity plans were approved in 1989, bringing the total number of education equity plans in operation in the province to 19. Education equity is a special program designed to ensure equal participation in the school system for students of Indian ancestry.

Most of the school boards in the province with a high proportion of Indian and Metis students (five percent or over) are now participating in Education Equity programs. The role of the Commission over the next few years will be to monitor these plans and, if required, to assist boards in meeting their goals. The first monitoring hearings are planned for 1990. At that time, the progress of the plans will be reviewed.

Research compiled by the Commission a few years ago indicated that the dropout rate for children of Indian ancestry was much higher than for other children. It seemed clear that Indian and Metis children were not benefiting from the education system in the same way

board to develop its own plan, with guidance from the Commission.

Each school board that develops a plan is asked to set goals for a 10-year period. The plans are then approved by the Commission and will be monitored by the Commission over the ten-year period the plans are in effect.

All of the Education Equity Plans set out specific initiatives that will be undertaken in each of the following areas:

- increasing the number of Indian and Metis teachers;
- Reviewing school policies and procedures to make sure they are fair to people of Indian ancestry;
- Providing cross-cultural training to all teachers;
- Putting material in the curriculum that is relevant to Indian and Metis students; and,
- Involving more Indian and Metis parents in the school system.

The 19 boards with Education Equity plans have a total enrolment of approximately 74,700 students: 15.6 percent are students of Indian ancestry. Those boards employ approximately 4,100 teachers: 3.5 percent are of Indian ancestry.

If the19 boards meet the goals they have set for themselves, in 10 years an additional 409 teachers of Indian ancestry will have been hired.

In February, 1989 the Commission, in co-operation with the Saskatchewan School Trustees Association, the Saskatchewan Teachers' Federation and Saskatchewan Education, offered an education equity seminar. Representatives from school divisions discussed various aspects of education equity with staff from aboriginal teacher education programs and with others interested in the education of aboriginal students.

Saskatchewan Programs

Employment	Approval Date
Saskatchewan Human Rights Commission	January 16, 1980
Saskatchewan Telecommunications	October 29, 1982
Saskatchewan Government Insurance Corporation	February 16, 1984
Westbridge Computer Corporation	December 19, 1984
The Co-operators	August 15, 1985
City of Regina	February 10, 1987
City of Saskatoon	February 10, 1987
Government of Saskatchewan (out-of-scope)	June 16, 1987
Government of Saskatchewan (SGEU)	November 16, 1988
Government of Saskatchewan (CUPE)	July 6, 1989

Training & Education	Approval Date
Gabriel Dumont Institute of Native Studies and Applied Research Saskatchewan Urban Native Teacher Education Program (SUNTEP)	August 5, 1980
Northern Teacher Education Program (NORTEP)	September 21, 1981
Gabriel Dumont Institute of Native Studies & Applied Research (Preparatory, Technical & University Programs)	September 16, 1983
Saskatchewan Institute of Applied Arts and Science, Wascana Campus	April 4, 1986
University of Saskatchewan, College of Arts and Sciences	February 23, 1988
Saskatchewan Institute of Applied Arts and Sciences, Technologies, Native Services Division	July 27, 1988

Education Equity	Approval Date
Saskatoon Catholic School Division No. 20	May 12, 1987
Indian Head School Division No. 19	June 30, 1987
Meadow Lake School Division No. 66	August 18, 1987
Northern Lakes School Division No. 64	August 18, 1987
Saskatoon Public School Division No. 13	August 18, 1987
Prince Albert Public School Division No. 3	September 8, 1987
Regina Catholic School Division No. 81	October 29, 1987
Wilkie School Division No. 59	December 8, 1987
Biggar School Division No. 59	December 8, 1987
North Battleford School Division No 16.	January 12, 1988
Cupar School Division No. 28	January 12, 1988
Prince Albert Comprehensive High School Board	January 12, 1988
Wadena School Division No. 46	May 18, 1988
Northern Lights School Division No. 113	September 9, 1988
North Battleford School Division No. 103	September 21, 1988
Balcarres School Division No. 87	September 21, 1988
Broadview School Division No. 18	November 16, 1988
Kamsack School Division	January 10, 1989
Prince Albert Catholic School Division	February 16, 1989

Education Activities

It is the responsibility of the Saskatchewan Human Rights Commission to further equality and the recognition of human rights through research and education programs. Under Section 25 of the *Code* the Commission has a duty to:

a. Forward the principle that every person is free and equal in dignity and rights without regard to his race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin;

b. Promote an understanding and acceptance of, and compliance with, the *Code*;

c. Develop and conduct educational programs designed to eliminate discriminatory practices related to race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin;

d. Disseminate information and promote understanding of the legal rights of residents of the province and conduct educational programs in that respect;

e. Further the principle of equality of opportunities for persons, and equality in the exercise of the legal rights of persons regardless of their status;

f. Conduct and encourage research by persons and associations actively engaged in the field of promoting human rights;

g. Forward the principle of cultural diversities as a basic human right and fundamental human value.

The Commission's Public and Special Programs Unit meets its mandate by providing information about human rights issues, about *The Saskatchewan Human Rights Code*, and about the activities of the Commission. Information is provided to the public through printed material such as newsletters and pamphlets; through speaking engagements at meetings, conferences and workshops; and through contacts with the media.

In 1989, staff at the Regina and Saskatoon offices provided information about human rights through 89 educationals conducted at public meetings, schools, businesses and agencies. Staff also participated in five workshops, four conferences, four displays and in addition, attended 30 community meetings.

A major event was a public meeting in celebration of International Human Rights Day, held at the public library on December 10 in Saskatoon. The Saskatchewan Alliance Against Sexual Harassment presented a skit highlighting problems faced by women in the workplace, followed by a discussion with the audience. Kids on the Block Puppeteers presented a show that broadened the audience's perception of people with disabilities.

The Public and Special Programs Unit also organized an affirmative action public hearing in Saskatoon, and an Education Equity Seminar, also in Saskatoon.

A number of research projects were undertaken by staff in 1989, on the following topics: mental disability, visible minorities, affirmative action, drug testing, and employment benefits.

Information was also provided to the public through the media; in 1989 Commissioners and staff had 233 personal contacts with the media, many resulting in stories in the province's newspapers, and on radio and television. In addition, numerous news releases were provided to the media during the course of the year.

Three newsletters were produced in 1989, pamphlets were updated, and a new pamphlet on race discrimination was produced. In addition, information about International Human Rights Day was provided to media, to all MLAs, and to public interest groups.

For the first time, the Commission worked with SCAN (Saskatchewan Advanced Communications Network). Commission staff previewed more than 150 videos and films with a human rights theme, and provided a list to SCAN of those it recommended for purchase. Work is also being done with SCAN to produce a series on racism.

Another aspect of the education role of the Commission is providing information about the *Code* and other human rights issues to the hundreds of inquiries received by telephone, mail, and from visitors to the offices. In addition, thousands of pamphlets explaining the *Code* are provided to members of the public each year.

Information is also provided in the form of videos, which are available on a loan basis. "Doing What's Right"provides information about *The Saskatchewan Human Rights Code*; a resource guide for teachers, to be used in conjunction with the video, is also available. In 1989, copies of the video were distributed more than 80 times.

For a listing of other human rights videos that are available, see listing at the end of this report.

The office in Saskatoon also maintains a reference library on human rights issues that is open to the public during office hours. Books, periodicals, and newspaper clippings provide current background information.

Exemptions

Section 48 of the *Saskatchewan Human Rights Code* allows for an exemption from any provision of the *Code* "where any person or class of persons is entitled to an exemption ... under any provision of this Act" or where the Commission "considers (an exemption) necessary and advisable."

In 1989 the Commission considered 18 exemption applications. All of these applications were granted.

Exemptions in 1989 were granted from section 11 (accommodation), section 12 (public services), section 13 (education), section 15 (contracts), section 16 (employment) and section 19 (pre-employment advertisements, job applications and job interviews).

APPLICANT/DESCRIPTION OF APPLICATION	Approval Date
MELFORT AND DISTRICT PIONEER LODGE AND NIKUAWA PIONEER VILLAGE Allows applicant to hire only men as resident attendants when they are working with male residents	January 10, 1990
ZION EVANGELICAL LUTHERAN CHURCH Religious background can be considered when hiring church secretary	March 31, 1989
COLLEGE OF LAW Applicant can consider aboriginal ancestry as a positive factor when assessing applicants for admission to the College	April 14, 1989
INDIAN ECONOMIC DEVELOPMENT PROGRAM Benefits under this program can be restricted to Status Indians	April 14, 1989
NATIVE BUSINESS DEVELOPMENT PROGRAM Benefits offered under program can be restricted to people of Metis and Non-status Indian ancestry	April 14, 1989
SASKATCHEWAN INCOME PLAN Allows single persons to receive higher benefit levels when married or common-law couples	April 18, 1989
SASKATCHEWAN OPPORTUNITIES PROGRAM Allows summer student employment program to limit applicants to students with physical disabilities	May 5, 1989
SASKATOON INTERVAL HOUSE Allows applicant to advertise for and hire women of aboriginal ancestry for one full-time and two part-time positions	May 10, 1989
COMMUNITY HEALTH SERVICES (SASKATOON) ASSOCIATION LIMITED Applicant can restrict the position of Native Health Worker to a person of aboriginal ancestry	May 18, 1989
NO. 587762 SASKATCHEWAN LTD. Applicant can give preference in hiring to persons of aboriginal ancestry until 51 percent of the employees are aboriginal persons	June 13, 1989
SALVATION ARMY MEN'S SOCIAL SERVICE CENTRE Applicant can restrict position of desk clerk at local hostel to male	June 20, 1989
YORKTON PARKLAND HOUSING SOCIETY Applicant can restrict rental housing for new tenants to people of aboriginal ancestry	July 10, 1989
GABRIEL DUMONT INSTITUTE Applicant can advertise for and give preference to the hiring of persons of aboriginal ancestry until 65 to 80 percent of that workforce is composed of aboriginal persons	August 3, 1989
PRAIRIE PROGRAM ADMINISTRATORS LTD. Preference in hiring can be given to persons with disabilities	August 31, 1989
NATIVE LAW CENTRE Applicant can restrict position of legal research officer to person of aboriginal ancestry	September 22, 1989
LLOYDMINSTER SCHOOL DIVISION Two scholarships offered through school divisions can be restricted to students of aboriginal ancestry	October 16, 1989
GABRIEL HOUSING CORPORATION Applicant can restrict rental housing for new tenants to people of aboriginal ancestry. It can give preference in hiring and contracts to persons of aboriginal ancestry	November 13, 1989
BSD TRAINING AND RESOURCES Certain training programs can be restricted to persons of aboriginal ancestry, disabled persons and visible minorities	December 4, 1989

Accessibility

Physically disabled people are often denied their rights to equal opportunity and access because of architectural barriers. To encourage elimination of those barriers, the Commission adopted Accessibility Standards Guidelines in 1980 which were revised in 1985, 1988 and 1989.

The Guidelines set out the standards all buildings and facilities to which the public is customarily admitted must meet to be accessible to persons with physical disabilities. But the Commission can act only when it receives a complaint; it uses its Accessibility Standards to assess the validity of that complaint.

The Saskatchewan Human Rights Commission amended its Accessibility Standards Guidelines in April 1988 and again in February 1989 so that they would conform as closely as possible to the government's *Uniform Building and Accessibility Standards Act.*

The government also has accessibility regulations under *The Uniform Building and Accessibility Standards Act,* which were proclaimed June 6, 1988. The regulations apply to new public buildings and those renovated for a new use; all builders are required to meet those standards at the time of construction.

The Commission is pleased with the broad application of the government's regulations, but is concerned about buildings and facilities that are exempt in provincial regulations that are not exempted in the Commission guidelines. Some of the most significant differences are:

- Provincial regulations exempt any apartment complex which contains fewer than five units. Commission guidelines do not.

- Provincial regulations, for the most part, do not require visual and auditory aids in public buildings for those who are hearing impaired or visually impaired. Commission guidelines contain this requirement.

- Provincial regulations do not require small office buildings of two and three stories to make the second and third levels accessible. Commission guidelines contain this requirement.

- Provincial regulations do not require recreation facilities – such as parks, zoos, camping facilities – to be accessible. Commission guidelines require all recreational facilities to be accessible.

Because of these differences, the Commission will retain its own set of accessibility guidelines and will continue to use them as a standard when reviewing accessibility complaints.

The Saskatchewan Human Rights Code takes precedence over other provincial legislation, and it is therefore possible that a builder who has met the government's accessibility standards could still be in contravention of *The Saskatchewan Human Rights Code.*

Copies of the Commission's accessibility guidelines are available upon request.

Commission Materials

These publications are available free of charge by contacting the nearest Commission office.

Publications marked with an asterisk (*) are available in print only. All other publications are available in print or on cassette tape.

1. The Saskatchewan Human Rights Code and Regulations

2. Pamphlets and Brochures

   Affirmative Action

   Application Forms and Interview Guide: A Guideline for Employers and Job Applicants

   Doing What's Right: The Saskatchewan Human Rights Code

   Filing a Complaint: Now What Happens?

   Finding a Home: Landlord and Realtor Responsibilities

   Getting About: Rights of the Physically Disabled

   Human Rights in the Workplace: An Employer's Guide

   Race Discrimination

   Sexual Harassment

   Towards Equality: A Guide to Special Programs in Saskatchewan

3. Saskatchewan Human Rights Commission Newsletters

   Vol. 9, #3 Compulsory Retirement: Elements of the Debate

   Vol. 9, #4 Sexual Harassment: Taking a Stand

   Vol. 10, #1 KKK: An Editorial Statement

   Vol. 10, #2 Making Saskatchewan Accessible

   Vol. 10, #3 Education System and Human Rights

   Vol. 10, #4 Saskatchewan Human Rights Commission Releases Interpretive Documents on Pensions, Employee Benefits and Insurance

   Vol. 11, #1 Sexual Harassment: New Developments and Interpretations

   Vol. 11, #2 Independence for Human Rights Commission: An Idea Whose Time Has Come

   Vol. 11, #3 Canada's Constitution and Charter of Rights and Freedoms

   Vol 11, #4 Aboriginal Peoples of Canada and the Constitutional Process: The Task Ahead

   Vol. 12, #1 Affirmative Action and Human Rights in the 1980's

   Vol. 12, #2 The 35th Anniversary of the Universal Declaration of Human Rights: A Time to Celebrate

   Vol. 12, #3 Arbitrary Arrest and Detention

   Vol. 13, #2 Indian and Metis Self Government in Canda

   Vol. 13, #3 Affirmative Action: A New Direction for Schools

   Vol. 14, #1 Proposed Amendments to the Saskatchewan Human Rights Code

   Vol. 15, #1 After the Decade: Women's Rights in Saskatchewan

   Vol. 15, #2 Education Equity Plan Receives Approval

Vol. 16, #1 Discrimination on the Basis of Pregnancy

Vol. 16, #2 MedicalExaminations:Guidelines for Employers

Vol. 17, #1 Longtime Commission Members Honored at Reception

Vol. 17, #2 40th Anniversary of Human Rights Declaration

Vol. 17, #3 Appeal Court Decision Goes to Chambers

Vol. 17, #4 Two New Members Appointed to Commission

Vol. 18, #1 Red Eye Case Highlights Weakness in Code

Vol. 18, #2 Saskatchewan Human Rights Code Amended

4. "On Rights" Saskatchewan Human Rights Commission Schools Newsletter

Vol. 1, #1 An Introduction to Human Rights

Vol. 1, #2 The Canadian Charter of Rights and Freedoms: Section 15: Equality Rights

Vol. 2, #1 The Canadian Constitution and the Charter of Rights and Freedoms: A History of Civil Liberties in Canada

5. Affirmative Action Newsletters

No. 1 The Evolution of Affirmative Action

No. 2 Affirmative Action: Are Further Steps Necessary?

No. 4 Education Equity: A Plan of Action

No 5 A New Direction Needed for Affirmative Action

6. Videos:

Doing What's Right

Behind the Mask (CKTV)

Human Rights, Human Wrongs (Canadian Living Magazine)

Say No to Racism (Regina Public School Board)

Sexual Harassment in the Workplace (Labour Canada)
(Videos are available on a loan basis.)

7. Other Materials:

A Manual on the Charter of Rights and Freedoms

Accessibility Standards Guidelines, Revised February 16, 1989

Affirmative Action Legal Provisions

*Affirmative Action: A Case Book of Legislation and Affirmative Action Programs in Saskatchewan

Doing What's Right - Workshop Manual (available on loan basis)

Doing What's Right: Teacher's Resource Guide

Education Equity: A Report on Indian/Native Education in Saskatchewan

Human Rights and Benefits in the 80's: An Interpretation of the Saskatchewan Human Rights Code as it Applies to Pensions, Employee Benefits and Insurance

Prejudice in Social Studies Textbooks along with supplement

Saskatchewan Human Rights Commission Affirmative Action Decisions

Saskatchewan Human Rights Commission Exemption Orders

Saskatchewan Human Rights Commission Equal Pay Decisions

*Sex Bias in Primary Readers

Steps for Developing an Affirmative Action Program

*TASC Workshop on Handicapism

*TASC Workshop on Racism

*TASC Workshop on Sexism

8. Annual Reports 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988

9. Posters

Opportunities are Everyone's Right

Protected Categories

Protected Areas

Functions of the Commission

List of Other Publications Distributed by the Commission

Human Rights - Public Legal Education Association of Saskatchewan Publication

Commission Staff

SASKATOON OFFICE

Executive Director – *Kenneth C. Jamont*

Staff Lawyer – *Milton C. Woodard*

Chief Human Rights Officer – *William Raloss*

Investigators – *Genevieve Leslie*
– *Brenda Robertson*

Program Officer – *René Roy*

Communications Officer – *Vera-Marie Wolfe*

Intake Officer – *Pat Cooke*

Administration Officer – *Theresa Walker*

Stenographers – *Jan Cadman*
– *Beverly MacSorley*
– *Karen Ross*

Receptionists – *Vickie Klath* (term)
– *Helen Riggs*

REGINA OFFICE

Assistant Director – *Donalda Ford*

Investigators – *Daniel Conway*
– *Patricia Danforth*
– *Robin McMillan* (on leave)

Program Officer – *Irma Bird*

Intake Officer – *Bruno Hudolin* (term)

Senior Stenographer – *Laurena Daniels*

Stenographer – *Lisa Donovan*

Table I
Summary of Complaints Received in 1989 by Grounds and Category

Category	Age	Indian Ancestry	Other * Ancestry	Marital Status	Mental Disability	Physical Disability	Religion**	Sex	Sexual Harass.	Other	Total	Percent
Application Forms										30	30	12.3
Bill of Rights										11	11	4.5
Contracts		1						1			2	.8
Education							2	1			3	1.2
Employment	8	10	11	2		29	3	28	25		116	47.7
Housing		3	3	2	1						9	3.7
Occupations			2			1					3	1.2
Prof. Trade & Association												0
Public Services	2	13		31		7	1	6			60	24.0
Publications		1						1		2	4	1.6
Reprisals												0
Trade Unions						1					1	.4
Other										4	4	1.6
TOTAL	10	28	16	35	1	38	6	37	25	47	243	100
Percent	4.1	11.5	6.6	14.4	.4	15.6	2.5	15.2	10.3	19.3	100	
Files Carried Forward from 1989											116	
Total Files Under Investigation in 1989											359	

* Includes "race, color, place of origin, nationality"

** Includes "creed"

Table II
Disposition of Complaints

Disposition	Number
No Jurisdiction	12
No Reasonable Grounds	48
Withdrawn	69
Settled	22
No Probable Cause	31
Probable Cause Found	45
Application Forms	26
TOTAL	253
Under Investigation	106
GRAND TOTAL	359

Table III
At Settlement or Board Level

Disposition	Number
Board Files Carried Forward from 1988	24
Settlement Files Carried forward from 1988	29
Probable Cause Found in 1989	48
TOTAL	101

Table IV
Disposition of Settlements

Disposition	Number
Settled without directing formal inquiry	17
Settled after formal inquiry	20
Disposed of by board decision	5
TOTAL	42

Table V
Disposition of Boards

Disposition	Number
Boards Pending	12
Boards Settled	20
Boards Held	10
TOTAL	42

Table VI
Affirmative Action Plans Received in 1989

Affirmative Action Plans	Approved	Monitored
Education Equity	2	0
Employment	1	9
Training Program	0	6
TOTAL	3	15

Table VII
Requests for Exemptions in 1989

Exemptions	Number
Granted	18
Denied	0
Under Consideration	0
TOTAL	18